

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of an Appeal under Article 154P (6) of the Constitution read with Section 11(1) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

Court of Appeal Case No.:
CA (PHC) 24 / 2014

Provincial High Court Tangalle Case No:
HCRA 11 / 2012

Walasmulla Magistrate's Court:
21464

Officer-in-Charge,
Police Station, Katuwana.

Complainant

Vs.

1. Rajapakse Pathirana Dayawathie,
Ratagahakoratuwa, Thamaduwa,
Modarawana.
2. Amudamana Arachchige Ajith
Kumara,
"Vijitha", Horawinna,
Katuwana.
3. Amudamana Arachchige
Vijithananda,
"Vijitha", Horawinna,
Katuwana.
4. Amudamana Arachchige Laksiri
Chaminda
"Vijitha ", Horawinna,
Katuwana.

1st Party Respondents

AND

Amarapala Jayawardene,
Uswatte, Horawinna,
Katuwana.

2nd Party Respondent

AND BETWEEN

Amarapala Jayawardene,
Uswatte, Horawinna,
Katuwana.

2nd Party Respondent- Petitioner

Vs.

1. Rajapakse Pathirana Dayawathie,
Ratagahakoratuwa, Thamaduwa,
Modarawana.

2. Amudamana Arachchige Ajith Kumara,
"Vijitha', Horawinna,
Katuwana.
3. Amudamana Arachchige Vijithananda,
"Vijitha', Horawinna,
Katuwana.
4. Amudamana
Arachchige Laksiri Chaminda
"Vijitha ', Horawinna, Katuwana.

1st Party Respondent-Respondents

AND NOW BETWEEN

1. Amudamana Arachchige Ajith Kumara,
" Vijitha', Horawinna,
Katuwana.
2. Amudamana Arachchige Vijithananda,
'Vijitha ', Horawinna,
Katuwana.
3. Amudamana Arachchige Laksiri
Chaminda,
"Vijitha ', Horawinna,
Katuwana.

**1st Party-2nd 3rd and 4th
Respondent-Respondents-Petitioners**

Vs.

Rajapakse Pathiranage Dayawathie,
Ratagahakoratuwa, Thamaduwa,
Modarawana.

**1st Party- 1st Respondent-
Respondent-Respondent**

Amarapala Jayawardene,
Uswatte, Horawinna,
Katuwana.

**2nd Party Respondent-
Petitioner-Respondent**

Before: **Prasanth De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel: Hirosha Munsainghe AAL for the 1st Party, 2nd, 3rd, 4th Respondent-Respondent-Petitioner.
Shayamal Collure AAL with A.P Jayaweera AAL and P. S. Amarasinghe AAL for the 2nd Party Respondent-Petitioner-Respondent.

Written Submissions: 2nd Party Respondent-Petitioner-Respondent filed written submissions on 14/03/2023.
1st Party, 2nd Party, 3rd Party, 4th Respondent-Respondent-Petitioners filed written submissions on 17/03/2023.

Delivered on: 02.05.2023

Prasanth De Silva J.

Judgment

This is an appeal that emanates from the order made by the learned High Court Judge of Tangalle exercising revisionary jurisdiction of the Provincial High Court of the Southern Province holden in Tangalle seeking to aside the Order of the learned Magistrate made in terms of Section 68 (3) of the Primary Courts Procedure Act No. 44 of 1979 in favour of the 1st Party Respondents and directing the 2nd Party-Respondent to hand over the possession of the disputed land to the 1st party-Respondents.

It appears that in the revision application the learned High Court judge held against the 1st Party Respondent-Respondent on the basis that in terms of section 68 (1) of the Primary Court Procedure Act, the 2nd party Respondent-Petitioner was in possession of the disputed portion of land on the date of filing of the information and overruled the decision of the learned Magistrate.

Apparently, the learned High Court Judge had come to the aforesaid conclusion on the basis that since the information was filed on 23.01.2012 by the officer in charge of the police station Katuwana pursuant to the complaint made by the 1st Party-Respondent, R. P. Dayawathi on 27.03. 2011.

Consequent to the said complaint of R.P. Dayawathi, the 2nd Party-Respondent Amarapala Jayawardene alias Hitchchi Mahaththaya had made a statement to the Katuwana police station that,

‘මම පදිංචි ඉඩමෙන් වලස්මුල්ල ප්‍රදේශයේ කාන්තාවකට පර්වස් 17ක පමණ කොටසක් අයිති බවට මීට පෙර කටුවන පොලිස් ස්ථානයේ පැමිණිලි කලා. කටුවන පොලිසියේ එම ප්‍රතිඵල විභාග කර ඇයට මාගේ ඉඩමෙන් අයිතියක් තියෙනවා නම් නඩුවක් මගින් අයිතිය ලබා ගන්නා ලෙසට අවවාද කලා.’

In this instance, court observes that the said 2nd Party-Respondent, Amarapala Jayawardene had made a complaint to the police station on 01.12.2011 stating that,

‘මෙම ඉඩම මාගේ තාත්තා වන දොන් අන්ද්‍රියස් ජයවර්ධන යන අයගෙන් මට ලැබුණු සින්නර ඉඩමක්. එම ඉඩමට දැනට ව්‍යාජ ලෙස ඔප්පුවක් ලබා ගෙන ඉඩමට අයිතිවාසිකම් තියෙනවා කටුවන හොරවින්තේ පදිංචි අටුදමන ආරච්චිගේ මහින්ද, ඔහුගේ මල්ලි, බේබී, අමුදමන ආරච්චිගේ ලක්සිරි පිරිස මිනින්දෝරුවරු මහතකු ගෙන්වා ඉඩම කැබලි කර මායිම් වැටවල් ගැසීම සඳහා කුඤ්ඤ හිටවලා තියෙනවා.’

It appears that the Katuwana police had inquired about the said complaint of the 2nd Party-Respondent Amarapala Jayawardene and consequently had made observation notes on 02.12.2012. Statements were also recorded on 03. 02.2012 from 1st Party-1st Respondent R.P. Dayawathi, and 1st Party-2nd Respondent A. A. Ajith Kumara.

Therefore, it is imperative to note that the officer in charge of police station Katuwana had filed information on 23.01.2012, not on the complaint made by said R.P. Dayawathi on 27. 03. 2011, it was filed on the statements made by said R. P. Dayawathi and A.A Ajith Kumara

on 03.12. 2011 consequent to the complaint made by the 2nd party Respondent, Amarapala Jayawardene.

As such, it clearly shows that the said information was filed on the dispute that arose between the 1st party, 2nd,3rd,4th Respondents, and the 2nd party Respondent with regard to the blocks of land claimed by the 1st party Respondents when they made an attempt to demarcate boundaries of their lots by fencing the respective blocks of land.

Therefore, the learned High Court Judge misdirected himself and had come to an erroneous conclusion that the impugned information was filed consequent to the complaint made by the 1st party-1st Respondent the said R.P. Dayawathi on 27.03.2011.

Hence, it clearly manifests that the learned High Court judge erred in law and facts and held against the 1st Party-Respondents on the assumption that the 2nd party Respondent was in possession of the disputed blocks of land on the date of filing of the information in terms of Section 68(1) of the Act. Thus, the order dated 06. 05. 2014 of the learned High Court Judge stands to be set aside.

In view of the statements made by said R. P. Dayawathi on 03.12.2011, it states that,

‘ඊට පසුව මම 2011.12.01 දින මිනින්දෝරු මහතකු ගෙනවිත් මෙම ඉඩමේ මට අයිති කොටස මැනීම කරලා මායිම් කණු 04ක් දැම්මා. එම කණු 04න් මෙම ජයවර්ධන යන අය විසින්ම ගලවා දැම්මා.’

Since the 2nd Party-Respondent Amarapala Jayawardene had made the complaint on 01.12.2011 against the 1st Party-Respondent, it clearly demonstrates that the immediate dispute arose between the 1st Party-Respondents and the 2nd Party-Respondent just before filing of the information on 01.12.2011. In view of the complaint made by the 2nd party Respondent and the statements made by the 1st Party-Respondents, it is apparent that the 1st Party Respondents were dispossessed, or their possession had been disturbed by the 2nd party-Respondent. Thus, the learned Magistrate had correctly applied the relevant provisions of the

Primary Court Procedure Act and has held that in terms of Section 68(3) of the Act, the 1st Party-Respondent's position in respect of the disputed land was disturbed or had been dispossessed by the 2nd Party-Respondent within two months prior to the date of filing of the information. It is seen that the learned Magistrate acting as the Primary Court Judge had come to the correct findings of fact and law and decided the matter in favour of the 1st party Respondent. Thus, we set aside the order of the learned High Court Judge and uphold the order dated 18.06. 2012 of the learned Magistrate.

Hence, we allow the appeal of the 1st-Party-2nd,3rd, and 4th Respondent-Respondent-Petitioners [Appellant] and direct the 2nd Party Respondent-Petitioner-Respondent to hand over the position of the respective disputed portions of land to the 1st Party- 1st,2nd,3rd and 4th Respondent-Petitioner [Appellants].

The costs are fixed at LKR. 25,000 to be paid by the 2nd Party Respondent-Petitioner-Respondent to the 1st Party-2nd ,3rd ,4th Respondent-Respondent-Petitioners [Appellants].

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL